IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4679 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KANTI COTTON MILLS

Versus

ISHUBAX HAJI

Appearance:

1. Special Civil Application No. 4679 of 1987

MS PJ DAVAWALA for Petitioner No. 1

MR DD VYAS for Respondent No. 1

MS NANDINI JOSHI for Respondent No.2

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 30/08/2001

ORAL JUDGEMENT

1. Kanti Cotton Mill - the then unit of Gujarat State Textile Corporation, Surendranagar, has filed this

petition challenging the judgment and award dated 10th August, 1987, passed by the Appellate Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as `the Act') in Appeal No.39 of 1987. By the impugned judgment and award, the Appellate Authority has held and directed the petitioner mill to pay to the respondent workman Shri Ishubax Haji is entitled to Rs.2636.80 difference amount of gratuity of 80 days salary.

2. The facts giving rise to this petition are as under:

2.1 Shri Ishubax Haji, the respondent workman was employed with the then Kanti Cotton Mill. He has retired from the Mill company on 22.8.84 on reaching his age of superannuation. On that day the mill company paid 520 days of gratuity.

2.2 As per the contention of the respondent, in view of the judgment of the Hon'ble Apex Court in the case of Shri Digvijay Woolen Mills Ltd. Vs. Shri Mahendra Prataprai Buch reported in (1980) 4 SCC 106, he was entitled to gratuity of difference amount of Rs.2636.80. He filed an application before the employer on 23.6.86 as per the Payment of Gratuity Act in Form I. As the employer failed and neglected to scrutinise the said application and consequently did not pay any amount to the workman.

2.3 Thereafter the respondent workman filed an application before the Controlling Authority somewhere on 23.6.86. The said application was filed under Rule 10(1) in Form N. After the receipt of the said application, the Controlling Authority issued notice to the mill company and ultimately the first authority by its order dated 31.1.87 stated as the workman retired from 1984 and present application filed in 1986 and therefore the same is barred by period of limitation and thereby rejected the said application.

2.4 Being aggrieved and dissatisfied with the aforesaid order, the respondent workman filed an appeal being Appeal No.39 of 1987 before the Appellate Authority. The Appellate Authority by its judgment and order dated 10.8.1987 pleased to held that the mill company has already paid certain amount of gratuity namely for 520 days. However, as per the calculation of the workman and the authority, the workman is entitled gratuity for 600 days. However, in view of the judgment of the Hon'ble Supreme Court in Digvijay Woolen Mills Limited's case the workman is entitled for 600 days

gratuity and that is to be taken into consideration the respondent workman is entitled for gratuity of 80 days being amount of Rs.2636.80.

2.5 Being aggrieved and dissatisfied with the aforesaid order of the Appellate Authority, the present petitioner has filed this petition before this Court somewhere in September 1987.

3. Ms.P.J.Davawala, learned advocate appeared on behalf of the petitioner submitted that in this case the first authority dismissed the application of the workman only on the ground of limitation whereas the appellate authority without considering the plea straightway decided and granted payment of gratuity to the workman and therefore the reasonings of the appellate authority is clearly errorneous. According to her, the appellate authority ought to have remanded the matter if they considered the workman's application on the ground of delay. In fact, she submitted that there is no whisper of condonation of delay in the order of the appellate authority and therefore also to that extent the order of the appellate authority is required to be quashed and set aside.

3.1 She contended that as regards petitioner mill company is concerned, the following facts are required to be considered. The mill company was closed from 9.7.1981 to 14.10.1982. Under the provisions of Industries (Development and Regulation) Act 1951 particularly under Sec.18AA of the Act the management of the mill was taken over by authorised persons and working of the mill started somewhere on 15.1.1983. Thereafter, as per the (Nationalisation) Act 1986, on the appointed day i.e. 1.1.1986 present Kanti Cotton Mill undertaking and the right title and interest of the owner in relation to every such sick textile undertaking shall stand transferred to, and shall vest absolutely in the State Government and by virtue of section 3(2), the mill company a sick textile undertaking which stands vested in the State Government by virtue of sub-section (1) shall, immediately after it has so vested, stand transferred to, and vested in the Corporation.

3.2 Learned oadvocate for the petitioner further submitted that in any view of the matter when the workman retired in 1984, the liability cannot be fastened on the Corporation in this behalf. It is continued with the authorised person. She has relied upon the definition of `owner' contained in sec.2(f) which reads as follows:

"`owner' when used in relation to a sick textile undertaking means any person or firm who or which is, immediately before the appointed day, the immediate proprietor or lessee or occupier of the sick textile undertaking or any part thereof, and in the case of a textile company which is being wound up or the business whereof is being carried on by a liquidator or receiver, includes such liquidator or receiver and also includes an agent or manager of such owner but does not include any person or body of person authorised under the Industries (Development and Regulation) Act 1951 to take over the management of the whole or any part of the textile undertaking."

3.3 She has further relied upon sec.5 of the Act which provides for owner to be liable for certain prior liabilities. Sec.5 reads as under:

"Sec.5(1) Every liability of the owner of the sick textile undertaking in respect of any period prior to the appointed day, shall be the liability of such owner and shall be enforceable against him and not against the State Government or the Corporation."

"(2) For the removal of doubt it is hereby declared that-

(a) save as otherwise expressly provided in this section in any other section of this Act no liability in relation to the sick textile undertaking in respect of any period prior to the appointed day, shall be enforceable against the State Government or the Corporation."

(b) no liability of the sick textile undertaking or any owner thereof for the contravention before the appointed day, of any provision of law for the time being in force, shall be enforceable against the State Government or the Corporation."

3.4 She submitted that on conjoint reading of sec.2(f) read with sec.5 of the Act whatever the liability of original owner cannot be fastened on the present Corporation. She submitted that after the liquidation of the company, the mill carried on business by virtue of sec.18AA of the Act and thereafter from 1.1.86 present Corporation has carried on business in this behalf. She submitted that once the authorised

person is not an owner the said application is not maintainable. She has also relied upon Sec.12 of the Act which provides for employment of certain employees to continue. She therefore submitted that Sec.12 of the Act will also not be applicable in this case because that application provides liability of employee who was in service prior to 1986 and who was continued in service of Corporation but in this case prior to 1.1.1986 the respondent workman has already retired from the service.

4. On the other hand, Mr.D.D.Vyas, learned advocate appeared on behalf of the respondent workman and Ms.Joshi, learned AGP appeared on behalf of the State. Both the learned advocates have relied upon the judgment of this Court in Special Civil Application No.9755 of 1998 decided by this Court (Coram: K.M.Mehta, J.) on 20.04.2001. Relying upon the said judgment, learned advocate submitted that the appellate authority was perfectly justified in condoning the delay and also deciding the said application of the workman on merits of the matter. This being a beneficial legislature the said has to be worked in favour of the workman employee. He further submitted that the authority has only relied upon the judgment of the Hon'ble Supreme Court in the case of Shri Digvijay Woolen Mills Ltd.(supra) and therefore, the authority was perfectly justified in granting the additional amount of gratuity to the workman.

4.1 He has relied upon the another judgment of this Court in Special Civil Application 4681 of 1987 with Special Civil Application No.4678 of 1987 decided by this Court (Coram: K.M.Mehta, J.) on 10th July, 2001. In view of the same he submitted that when the workman retired on 1984, the liability has to be against the employer, on that day.

4.2 In support of his contention he has also relied upon the definition of Sec.2(h) of the Gujarat Sick Textile Undertakings (Nationalisation) Act 1986 (hereinafter referred to as `the said Act'). Sec.2(h) of the said Act reads as under:

> "Sec.2(h) " sick textile undertaking" means a textile undertaking, specified in the First Schedule, the management of which has, before the appointed day, been taken over by the Central Government under the Industries (Development and Regulation) Act, 1951, or as the case may be, vested in the Corporation as a lessee"

4.3 He has also relied upon Sec.3 of the said Act

which provides acquisition of the rights of owners of sick textile undertakings, particularly Sec.3(1) and Sec.3(2) reads as under:

"Sec.3(1) On the appointed day, every sick textile undertaking and the right, title and interest of the owner in relation to every such textile undertaking shall stand transferred to, and shall vest absolutely in, the State Government."

"Sec.3(2) The sick textile undertaking which stands vested in the State Government by virtue of sub-section (1) shall, immediately after it has so vested, stand transferred to, and vested in, the Corporation."

4.4 He has also relied upon provision of Sec.4 of the said Act particularly sub-clause (6) of Sec.4 of the Act which reads as under:

"Sec.4(1) General effect of vesting:-

"The sick textile undertaking referred to in section 3 shall be deemed to include all assets, rights, leaseholds, powers, and privileges and all property, movable and immovable, including lands, buildings, workshops, stores, instruments, machinery and equipment, cash balances, cash on hand, reserve funds, investments and book debts and all other rights and interests in, or arising out of, such property as were immediately before the appointed day in the ownership, possession, power or control of the owner of the sick textile undertaking, whether within or outside India, and all books of account, registers and all other documents of whatever nature relating thereto."

"Sec.4(6) If, on the appointed day, any suit, appeal or other proceeding of whatever nature in relation to any matter specified in sub-section (2) of section 7 in respect of the sick textile undertaking, instituted or preferred by or against the textile company, is pending, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the Corporation."

4.5 He has also relied upon Sec.12 of the said Act which reads as under:

"Sec.12 Employment of certain employees to continue : Every person who is a workman within the meaning of the Industrial Disputes Act, 1947, and has been, immediately before the appointed day, employed in the sick textile undertaking shall become, on and from the appointed day, an employee of the Corporation, and shall hold office or service in the Corporation with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if the rights in relation to such sick textile undertaking had not been transferred to, and vested in, the Corporation, and shall continue to do so unless and until his employment in the Corporation is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the Corporation."

4.6 He has also relied upon Second Schedule of the said Act which provides order of priorities for the discharge of liabilities in respect of the sick textile undertakings. Category I provides for all dues of employees of the sick textile undertaking relating to pre-take over management period and post-take over management period. He submitted that it is true that by virtue of the second judgment originally liability is of sick unit but by virtue of this act the said liability is fastened on the Corporation. He submitted that in view of Sec.7(2) of the Act which provides the liability of the owner is discharged by the State Government or the Corporation according to the order of the priorities mentioned in that Schedule, the amount to be paid to the owner under sub-sec.(1) shall stand reduced to that extent. He submitted that whatever the payment of gratuity by Corporation to the employee to the said extent the liability of the Corporation will be reduce qua owner regarding payment of compensation. So this interpretation will not prejudice the case of the Corporation in this behalf.

4.7 In view of the aforesaid provisions, he submitted that, in this case, the Controller under the provisions of Industries (Development and Regulation) Act 1951 was a legal person who was carrying on business of Kanti Cotton Mill and thereafter the Corporation has taken over the said mill from 1.1.1986. He submitted that all the old liabilities of the company are fastened on the

Corporation in view of the provisions of the Act and therefore in any view of the matter the Corporation is liable to make the payment of difference amount of gratuity to the workman in this behalf. He further submitted that the order passed by the authority in fixing the liability on the Corporation is perfectly legal and justified. He further submitted that in any view of the matter the appellate authority has given very cogent and convincing reasons of fixing the liability on the Corporation. He submitted that payment of gratuity is a beneficial provisions in favour of the workman and therefore this Court may not interfere under Article 227 of the Constitution of India with the said order of the appellate authority in view of the fact that the authority has given very cogent and convincing reasons for arriving at the said findings and there is no infirmity or there is no error apparent on the face of the record and therefore this Court may not interfere with the said findings of the appellate authority in this behalf.

5. I have considered the aforesaid submissions in this behalf. In view of my judgment, the liability is of the person on the date on which the workman retired. It is true that as per my second judgment in this case employee has retired in 1984, and therefore in view of my judgment of Kanti Cotton Mill Vs. Labhu (supra) the liability of the Corporation carrying on business under Sec.18-AA of the Act. However in view of the provisions of the Gujarat Sick Textile Undertakings (Nationalisation) Act 1986 particularly Sec.2(h), Sec.3, sub.sec 6 of Sec.4, Sec.7 and Second Schedule of the Act provides order of priority for the discharge of liability in respect of the liability the said liability is fixed on the Corporation. In view of the same, the order of the authority fixing the liability on the Corporation is legal and justified. It is no doubt true that the appellate authority has not given so much reasons but nonetheless the order of the appellate authority can be supported on the aforesaid reasonings and the authority has also relied upon the judgment of the Hon'ble supreme Court in Digvijay Mill's case (supra) which I have already referred earlier and to that extent the quantum of gratuity is fixed on the Corporation. In view of this provisions the present Corporation is liable for making the payment of gratuity to the workman in this behalf.

6. In my view the second contention of Mr.Vyas to be accepted that in this case the appellate authority has given very cogent and convincing reasons, there is no error apparent on the face of the record and therefore

under Article 227 of the Constitution of India, I do not find any reasons to interfere with the said findings of the appellate authority in this behalf. In view of the same, the petition is dismissed. Rule is discharged. No order as to costs.

(K.M. Mehta, J.)

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